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GAYA PRASAD v. BHAGAT SINGH.

"All these are circumstances which occur perhaps daily in every district in India, and having regard to the immense number of false charges made, (we) think it most desirable that there should be no doubt as to the law on the subject."

In the opinion of their Lordships, it would be a scandal if the remedy provided by this form of action were not available to innocent persons aggrieved by such unfounded charges, and they will humbly advise His Majesty that the appeal ought to be allowed and the decree of the Judicial Commissioner set aside, with costs, and that of the Subordinate Judge confirmed. The respondents must pay the costs of the appeal.

Appeal allowed.

Solicitors for the appellant:—*Sanderson, Adkin, Lee and Eddis.*

J. V. W.

1908
June 5.

APPELLATE CIVIL.

Before Mr. Justice Aikman and Mr. Justice Karamat Husain.

JUMAI KANJAR (DECREE-HOLDER) *v.* ABDUL KARIM KHAN (JUDGMENT-DEBTOR).*

Execution of decree—Limitation—Act No. XV of 1877 *(Indian Limitation Act), schedule II, article* 179 (5)*—Civil Procedure Code, section* 248*—Date of issuing notice.*

Held that the expression "the date of issuing notice under the Code of Civil Procedure, section 248," as used in article 179 (5) of the second schedule to the Indian Limitation Act, 1877, means the date upon which the Court passes an order for issue of a notice under section 248, not the date upon which such order actually issues.

THIS was an appeal arising out of proceedings for the execution of a decree. The decree-holders applied for execution, within time, on the 15th of January 1904. On the 21st of January 1904, the Court passed an order that notice should issue to the judgment-debtor under section 248 of the Code of Civil Procedure. The notice actually was issued on the 25th of January 1904. The next application for execution was presented on the 24th of January 1907, and it was then objected to as being barred

*Second Appeal No. 1180 of 1907 from a decree of Muhammad Ali, District Judge of Mirzapur, dated the 9th of July 1907, confirming a decree of Behari Lal Mehra, Munsif of Mirzapur, dated the 4th of May 1907.

by limitation. The Court of first instance (Munsif of Mirzapur) sustained this objection and dismissed the application for execution, and this order was upheld in appeal by the District Judge.

The decree-holder appealed to the High Court.

The Hon'ble Pandit *Madan Mohan Malaviya* and Munshi *Iswar Saran*, for the appellant.

Mr. *J. Simeon*, for the respondent.

AIKMAN and KARAMAT HUSAIN, JJ.—This is a decree-holder's appeal. The Courts below have held that the present application to execute is barred by limitation. The application to execute was presented on the 24th of January 1907. The last preceding application was made on the 15th of January 1904. On the 21st of January 1904, the Court passed an order that notice should issue to the judgment-debtor under section 248 of the Code of Civil Procedure. The notice was actually issued on the 25th January 1904. Article 179 of schedule II of the Limitation Act allows three years from "the date of issuing notice under the Code of Civil Procedure, section 248." If the date of issuing notice be taken to be the date on which it is actually issued, the application is within time. But if it be taken to be the date on which the Court passed an order for issue of notice under section 248, the application is too late. There is a great conflict of opinion in the different High Courts as to the meaning of the words quoted above. In this conflict we are bound to follow the rulings of our own Court, and the learned vakil for the appellant admits that those rulings are against him.* We accordingly hold that this appeal must fail, and we dismiss it with costs.

Appeal dismissed.

* The rulings referred to were *Udit Narain* v. *Ram Partab Singh* (Weekly Notes, 1881, p. 120) and *Baldeo* v. *Harrison* (Weekly Notes, 1890, p. 244).

1908
June 29.

Before Mr. Justice Aikman and Mr. Justice Griffin.

HAZARI MAL (DEFENDANT) v. BHAWANI RAM AND ANOTHER (PLAINTIFFS) AND PANNA LAL AND ANOTHER (DEFENDANTS) *

Civil Procedure Code, section 34—Non-joinder of parties—Objection not taken at the earliest opportunity—Limitation.

An objection as to the non-joinder of parties alleged to be necessary ought to be raised by the defendant at the earliest opportunity; where this is not done and the parties omitted are in consequence not added until after the expiry of the period of limitation for a suit against them, the defendant will not be permitted to take advantage of the bar of limitation.

Pateshri Partap Narain Singh v. *Rudra Narain Singh* (1) and *Guruvayya Gouda* v. *Dattatraya Anant* (2) followed. *Shamrathi Singh* v. *Kishan Prasad* (3) distinguished.

THE facts which gave rise to this appeal are as follows:—

The plaintiffs, Bhawani Ram and Jawahir Lal brought the suit on the allegation that they with one Rakhab Das were proprietors of a banking and commission firm at Secundrabad, and that Hazari Mal, the principal defendant, was indebted to the firm. Rakhab Das did not join in the suit, and was made a *pro formâ* defendant. The suit was filed on the 16th of August 1906. The defendant Hazari Mal filed a written statement on the 5th of September 1906. In that he took no objection to want of parties. Upwards of six months afterwards, namely on the 20th of March 1907, he took objection to the effect that the two minor sons of Rakhab Das ought to have been joined as parties to the suit and that in their absence the suit could not proceed. Thereon the plaintiffs, in order to remove this objection, though not admitting that the minors were necessary parties, applied for their names to be added, and this was done. Objection was then taken that the suit could not be maintained, as it was barred against the added defendants at the time their names were brought upon the record. The Court of first instance, relying on the decision in *Shamrathi Singh* v. *Kishan Prasad* (3), held that the minors were necessary parties, and as they were not joined as *pro formâ* defendants until after the period of limitation for the suit, it could not be maintained. Accordingly that Court dismissed the suit. On appeal the Additional District Judge, after

* First Appeal No. 19 of 1908, from an order of Muhammad Ahmad Khan, Additional Judge of Meerut, dated the 16th of December 1907.

(1) (1904) I. L. R., 26 All., 523. (2) (1903) I. L. R., 28 Bom., 11.
(3) (1907) I. L. R., 29 All., 311.

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referring to certain rulings, allowed the appeal and remanded the case for decision on the merits. Against this order of remand the defendant Hazari Mal appealed to the High Court.

Babu *Surendra Nath Sen*, for the appellant.

Babu *Durga Charan Banerji*, for the respondents.

AIKMAN and GRIFFIN, JJ.—This is an appeal from an order of remand. The plaintiffs Bhawani Ram and Jawahir Lal brought the suit on the allegation that they with one Rakhab Das were proprietors of a banking and commission firm at Secundrabad, and that Hazari Mal, the principal defendant, was indebted to the firm. Rakhab Das did not join in the suit, and was made a *pro formâ* defendant. The suit was filed on the 16th of August 1906. The defendant Hazari Mal filed a written statement on the 5th of September 1906. In that he took no objection to want of parties. Upwards of six months afterwards, namely, on the 20th of March 1907, he took objection to the effect that the two minor sons of Rakhab Das ought to have been joined as parties to the suit and that in their absence the suit could not proceed. Thereon the plaintiffs in order to remove this objection, though not admitting that the minors were necessary parties, applied for their names to be added, and this was done. Objection was then taken that the suit could not be maintained as it was barred against the added defendants at the time their names were brought upon the record. The Court of first instance, relying on the decision in *Shamrathi Singh* v. *Kishan Prasad* (1), held that the minors were necessary parties, and as they were not joined as *pro formâ* defendants until after the period of limitation for the suit, it could not be maintained. Accordingly he dismissed the suit. On appeal the Additional District Judge, after referring to certain rulings, allowed the appeal and sent back the case for decision on the merits. The principal defendant Hazari Mal appeals from that order of remand. In our opinion this case is distinguishable from that relied on by the learned Munsif. The facts resemble more those of a case referred to in the ruling *Shamrathi Singh* v. *Kishan Prasad*, namely, the case of *Pateshri Partap Narain Singh* v. *Rudra Narain Singh* (2). In this case the objection

(1) (1907) I. L. R., 29 All., 311. (2) (1904) I. L. R., 26 All., 528.

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to want of parties was clearly not taken at the earliest possible opportunity. The defendant belongs to the same caste and resides in the same place as the plaintiffs, and must be deemed to have known of the existence of the sons of Rakhab Das. Had he taken objection in his written statement, the case would have been different; but then, had he done so, the plaintiff could at once, within the period of limitation, have added the names of the minors. The defendant waited until a suit with the minors as defendants was barred by limitation and then took objection. In the case *Pateshri Partap Narain Singh* v. *Rudra Narain Singh* the learned Judges cited with approval a passage from a judgment of the Bombay High Court in the case *Guruvayya Gouda* v. *Dattatraya Anant* (1), where it is said:—"We must hold that the bar of limitation was not established, as the defendant's objection to non-joinder of parties having been taken at a late stage of the suit may be disregarded." We think that the Court of first instance ought not to have entertained the objection having regard to the provisions of section 34 of the Code of Civil Procedure. On the grounds stated above we uphold the decision of the Court below and dismiss the appeal with costs.

Appeal dismissed.

1908.
July 8.

APPELLATE CRIMINAL.

Before Mr. Justice Richards and Mr. Justice Karamat Husain

EMPEROR v. KHEORAJ AND OTHERS. *

Act No. I of 1872 *(Indian Evidence Act), section* 30*—Confession—Joint trial—Plea of the guilty by one of the accused—Use of confession against the rest—Criminal Procedure Code, sections* 271, 342.

Where an accused person has pleaded guilty and the Court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence with other co-accused and any statement in the nature of a confession that he may make used against them. *Queen Empress* v. *Paltua* (2) followed.

THE facts of this case are as follows:—

Sixteen persons were put on their trial on a charge of dacoity. Of these one Chidda, who had previously made a confession,

* Criminal Appeal No. 522 of 1908 against an order of Rai Baijnath, Additional Sessions Judge of Moradabad, dated the 21st May 1908.

(1) (1903) I. L. R., 28 Bom., 11. (2) (1900) I. L. R., 23 All., 53.